



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 10, 1995

Ms. Esther L. Hajdar
Assistant General Counsel
Texas Department of Agriculture
P.O.Box 12847
Austin, Texas 78711

OR95-1066

Dear Ms. Hajdar:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 36193.

The Texas Department of Agriculture (the "department") received a request for a copy of the investigative report in Incident No. 01-95-0009. You say the department has forwarded to the requestor a copy of the report in which you redacted portions of the report that refer to medical records. We understand you also withheld from required public disclosure the medical records that were attached to the report. The medical information concerns three different patients.

You assert that the medical information is excepted from required public disclosure based on section 552.101 of the Government Code in conjunction with section 5.08 of V.T.C.S. article 4495b. Section 552.101 of the Government Code excepts from required public disclosure information that is confidential by law, either constitutional, statutory, or by judicial decision. Subsections (b) and (c) of section 5.08 provide as follows:

(b) Records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician are confidential and privileged and may not be disclosed except as provided in this section.

(c) Any person who receives information from confidential communications or records as described in this section other than the persons listed in Subsection (h) of this section who are acting on the patient's behalf may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Subsection (c) prohibits the department from releasing the medical information at issue to the public unless the release is "consistent with the authorized purposes for which the information was first obtained."¹ We do not believe that the release of the medical information pursuant to an Open Records request meets the consistency requirement of subsection (c). Thus, the department may not release the medical information to the public.

However, some of the medical information in the report is about the requestor and another patient who is apparently related to the requestor. The report indicates that the requestor gave the medical information in the report about himself and his relative to the department's investigator. We do not believe section 5.08(c) requires the department to withhold that information from the requestor. However, the department must withhold from disclosure the medical information about a third patient that the requestor did not supply the department. *See* Gov't Code § 552.101; V.T.C.S. art. 4495b, § 5.08(c).

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay Guajardo
Assistant Attorney General
Open Records Division

KHG/rho

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¹The department is not a person listed in subsection (h) who is acting on the patient's behalf.

Enclosures: Submitted documents

cc: Mr. Ronald Jeffcoat
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(w/o enclosures)